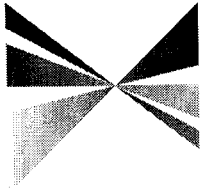


SOUTHERN CALIFORNIA



**ASSOCIATION OF
GOVERNMENTS**

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Paul Eaton, Montclair • Lee Ann Garcia, Grand
Terrace • Tim Jasper, Town of Apple Valley • Larry
McCallon, Highland • Deborah Robertson,
Rialto • Alan Wapner, Ontario

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Glen Becerra, Simi Valley • Carl Morehouse, San
Buenaventura • Toni Young, Port Hueneme

Orange County Transportation Authority: Lou
Correa, County of Orange

Riverside County Transportation Commission:
Robin Lowe, Hemet

Ventura County Transportation Commission:
Keith Millhouse, Moorpark

599-5/24/05

MEETING OF THE

SOLID WASTE TASK FORCE

NOTE: NEW TIME & MEETING ROOM

Tuesday, October 25, 2005

Riverside B Conference Room

1:00 – 3:00 p.m.

Located at:

SCAG MAIN OFFICE

818 West Seventh Street, 12th Floor

Los Angeles, CA 90017

(213) 236-1800

If members of the public wish to review the attachments or have any questions on any of the agenda items, please contact Jacob Lieb at 213.236.1921 or lieb@scag.ca.gov.

SCAG, in accordance with the Americans with Disabilities Act (ADA), will accommodate persons who require a modification of accommodation in order to participate in this meeting. If you require such assistance, please contact SCAG at (213) 236-1868 at least 72 hours in advance of the meeting to enable SCAG to make reasonable arrangements. To request documents related to this document in an alternative format, please contact (213) 236-1868.



SOLID WASTE TASK FORCE AGENDA

October 25, 2005
1:00 p.m. to 3:00 p.m.

PG#

1.0 CALL TO ORDER

Hon. Toni Young,
Chair

2.0 PUBLIC COMMENT PERIOD

Members of the public desiring to speak on an agenda time or items not on the agenda, but within the purview of this task force, must notify the Chair and fill out a speaker's card prior to speaking. Comments will be limited to three minutes and the Chair may limit the total time for comments to 20 minutes.

3.0 ROUTINE ITEMS

3.1 MEMBERSHIP LIST AND CONTACT INFORMATION Attachment

3.2 MEETING MINUTES September 22, 2005 MEETING Attachment

4.0 INFORMATION ITEMS

4.1 AB 1090 Update Task Force will discuss progress and issues on AB 1090 including upcoming legislative study sessions. Attachment

Hon. Toni Young 1
Chair

4.2 Regional Comprehensive Plan Draft Solid and Hazardous Waste Chapter Revised Outline Staff will review a proposed new outline for the Chapter's "Existing Conditions" section. Attachment

Jacob Lieb 7
Acting Lead Regional Planner

4.3 Underground Rulemaking Task Force will discuss underground rulemaking concerns and review proposed new regulations. Attachment

Hon. Toni Young 9
Chair
Bill Gausewitz, Director, California
Office of Administrative Law

SOLID WASTE TASK FORCE AGENDA

**October 25, 2005
1:00 p.m. to 3:00 p.m.**

5.0 ACTION ITEMS

5.1 Renew L.A.

Councilman Smith will describe the Renew
L.A. program in the City of Los Angeles
Attachment

**Hon. Greig Smith
City of Los Angeles**

28

Recommendation:

Recommend that the Energy and Environment Committee
Support Renew L.A.

6.0 SET NEXT MEETING DATE/TIME/LOCATION

**Hon. Toni Young,
Chair**

7.0 ADJOURNMENT

SOLID WASTE TASK FORCE AGENDA

October 25, 2005

1:00 p.m. to 3:00 p.m.

Item 3.1

MEMBERSHIP LIST AND CONTACT INFORMATION

October 25, 2005

SOLID WASTE TASK FORCE AGENDA

July 13, 2005

12:00 p.m.-1:30 p.m.

Name	Address	Phone	Fax	e-mail
Clark, Margaret	Hon. Margaret Clark 3109 N. Prospect Rosemead, CA 91770	(626) 569-2100	(626) 307-9218	bcrowe@cityofrosemead.org
Eckenrode, Norman	Hon. Norman Eckenrode Councilmember, City of Placentia 401 E. Chapman Ave. Placentia, CA 92870	(714) 993-8261	(714) 961-0283	neckenrode@adelphia.net
Martin, Kay	Ms. Kay Martin Vice President, BioEnergy Producers Assn. 236 Ferro Drive Ventura, CA 93001	(805) 653-5935		kay4bioenergy@aol.com
Miller, Michael	Hon. Michael Miller Mayor, City of West Covina 1444 W. Garvey Ave. West Covina, CA 91793	(939) 814-8400	(939) 814-8406	millereviro@earthlink.net
Mohajer, Mike	Mr. Mike Mohajer P.O. Box 3334 Box 1460 San Dimas, CA 91773	(909) 592-1147	(909) 592-1147	mikemohajer@yahoo.com
Nelson, Larry	Hon. Larry Nelson Councilmember, City of Artesia 18747 Clarkdale Ave Artesia, CA 90701-5899	(562) 865-6262	(562) 865-6240	lnelson@cityofartesia.org
Smith, Greig	Hon. Greig Smith Councilmember, City of Los Angeles – District 12 200 N. Spring Street, 4th FL Room 405 Los Angeles, CA 90012	(213) 473-7012	(213) 473-6925	smith@council.lacity.org
Van Arsdale, Lori	Hon. Lori Van Arsdale Councilmember, City of Hemet 445 E. Florida Ave Hemet, CA 92543	(951) 765-2303	(951) 765-3785	lvansarsdale@ci.hemet.ca.us
Vizcarra, Joe	Mr. Joe Vizcarra Lt. Traffic Operations Center Los Angeles Communications Center California Highway Patrol 120 S. Spring Street Los Angeles, CA 90012	(213) 897-6136	(213) 897-0519	jvizcarra@chp.ca.gov
Young, Toni (Chair)	Hon. Toni Young Councilmember, City of Port Hueneme 766 Polaris Way Port Hueneme, CA 93041-2333	(805) 986-6500	(805) 986-6581	ottoandtoni@verizon.net

SOLID WASTE TASK FORCE AGENDA

July 13, 2005

12:00 p.m.-1:30 p.m.

Item 3.2

**MINUTES, SEPTEMBER 22 MEETING
October 25, 2005**

SOLID WASTE TASK FORCE AGENDA

October 25, 2005

1:00 p.m to 3:00 p.m.

**THE FOLLOWING MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY
THE SOLID WASTE TASK FORCE.**

September 22, 2005

1.0 CALL TO ORDER

Chair Toni Young called the meeting to order at approximately 1:00 PM. Attending members were:

**Clark, Margaret
Martin, Kay
Mohajer, Mike
Young, Toni**

2.0 PUBLIC COMMENT PERIOD

There were no comments from the public.

3.0 ROUTINE ITEMS

3.1 Membership List and Contact Information

3.2 Minutes of June 23, 2005 Meeting

Minutes were approved with two corrections where the meeting date was incorrectly listed.

4.0 INFORMATION ITEMS

4.1 Legislative Discussion on Pending Bills

4.1.1 AB 1090, AB 1351 and other State Legislation

Members of the Task Force gave brief updates on legislation. The Task Force asked that staff investigate hosting a Legislative Work Shop on AB 1090. AB 1351 was amended, and no longer deals with Solid Waste issues. The Task Force asked staff to send a letter to the Governor encouraging the administration to seek similar legislation in the next session. Staff will investigate whether any standing SCAG policies could support this legislative concept, and if not, will agendaize the issue for consideration at a future Energy and Environment Committee meeting.

4.1.2 S.B. 1607 and HR 3577 and other Federal Legislation

Members of the Task Force gave updates on these bills which would grant some authority to local agencies in the event of railroad accidents. The Task Force asked that letters be sent in support of this Legislation.

SOLID WASTE TASK FORCE AGENDA

October 25, 2005

1:00 p.m to 3:00 p.m.

5.0 ACTION ITEMS

5.1 Regional Comprehensive Plan Draft Solid Waste Chapter

The Task Force discussed the preliminary draft chapter as presented. In general, Task Force members commented that the chapter contained numerous factual errors and confusing information, and that the chapter would need considerable additional work before being considered by the Energy and Environment Committee for public release.

ACTION: It was agreed that staff will report back to the Task Force with a new basic outline for the Chapter, and discuss next steps for making revisions at that time

6.0 SET NEXT MEETING DATE/TIME/PLACE

The next meeting will be held at SCAG on Tuesday October 25 at 1 p.m.

7.0 ADJOURNMENT

The meeting was adjourned at approximately 2:45 p.m.

SOLID WASTE TASK FORCE AGENDA

October 25, 2005

1:00 p.m to 3:00 p.m.

Item 4.1

AB 1090 Update

October 25, 2005

000001

ASSEMBLY BILL

No. 1090

Introduced by Assembly Member Matthews

February 22, 2005

An act to amend Sections 40051 and 40201 of, to add Sections 40105.5, 40116.5, 40172.5, and 41781.3 to, and to repeal Section 40117 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1090, as introduced, Matthews. Solid waste: diversion: conversion.

The existing California Integrated Waste Management Act of 1989 establishes an integrated waste management program administered by the California Integrated Waste Management Board and requires the board and local agencies to promote specified waste management practices, in order of priority. Under existing law, the act requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components. The first and each subsequent revision of the element is required to divert 50% of the solid waste subject to the element, on and after January 1, 2000, through source reduction, recycling, and composting activities. except as specified.

The act defines the term "transformation" as meaning incineration, pyrolysis, distillation, or biological conversion other than composting. The act provides that "transformation" does not include composting, gasification, or biomass conversion.

This bill would revise the waste management practices that the board and local agencies are required to promote.

The bill would repeal the definition of the term "gasification" and would define the terms "conversion technology," "beneficial use," and

“recovery” for purposes of the act. The bill would revise the definition of the term “transformation” to exclude pyrolysis, distillation, or biological conversion other than composting from that definition and would specify that transformation does not include conversion technology.

The bill would allow the source reduction and recycling element to include, in the 50% of solid waste required to be diverted, solid waste that is subject to recovery through conversion technology, if specified conditions are met with regard to the conversion technology project and the board holds a public hearing and makes certain findings.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 40051 of the Public Resources Code is
- 2 amended to read:
- 3 40051. In implementing this division, the board and local
- 4 agencies shall do both of the following:
- 5 (a) Promote the following waste management practices in
- 6 order of priority:
- 7 (1) Source reduction.
- 8 (2) ~~Recycling and composting~~ *Recovery, through recycling,*
- 9 *composting, conversion technology, or other beneficial use*
- 10 *technologies.*
- 11 (3) Environmentally safe transformation and environmentally
- 12 safe land disposal, at the discretion of the city or county.
- 13 (b) Maximize the use of all feasible source
- 14 reduction, ~~recycling, and composting~~ *and recovery* options in
- 15 order to reduce the amount of solid waste that must be disposed
- 16 of by transformation and land disposal. For wastes that cannot
- 17 feasibly be reduced at their source, ~~recycled, or composted, or~~
- 18 *recovered for beneficial use,* the local agency may use
- 19 environmentally safe transformation or environmentally safe land
- 20 disposal, or both of those practices.
- 21 SEC. 2. Section 40105.5 is added to the Public Resources
- 22 Code, to read:
- 23 40105.5. “Beneficial use” means the point at which solid
- 24 waste is no longer a solid waste for purposes of this chapter and
- 25 reenters commerce as a market commodity or feedstock. For

1 purposes of this section, that point occurs when the solid waste is
2 used in a manufacturing process to make a product, used as an
3 effective substitute for a commercial product, or used as a fuel
4 for energy recovery.

5 SEC. 3. Section 40116.5 is added to the Public Resources
6 Code, to read:

7 40116.5. (a) "Conversion technology" means the processing,
8 through noncombustion thermal, chemical or biological
9 processes, other than composting, of solid waste, including, but
10 not limited to, organic materials such as paper, yard trimmings,
11 wood wastes, agricultural wastes, and plastics.

12 "Conversion Technology" includes, but is not limited to,
13 catalytic cracking, distillation, gasification, hydrolysis, and
14 pyrolysis.

15 (b) "Conversion Technology" does not include anaerobic
16 digestion, biomass conversion, aerobic or anaerobic composting,
17 or incineration.

18 (c) "Conversion technology facility" means a facility that
19 produces products, using conversion technology, including, but
20 not limited to, electricity, alternative fuels, chemicals, or other
21 products that meet quality standards for use in the marketplace.

22 SEC. 4. Section 40117 of the Public Resources Code is
23 repealed.

24 ~~40117. "Gasification" means a technology that uses a~~
25 ~~noncombustion thermal process to convert solid waste to a clean~~
26 ~~burning fuel for the purpose of generating electricity, and that, at~~
27 ~~minimum, meets all of the following criteria:~~

28 ~~(a) The technology does not use air or oxygen in the~~
29 ~~conversion process, except ambient air to maintain temperature~~
30 ~~control.~~

31 ~~(b) The technology produces no discharges of air contaminants~~
32 ~~or emissions, including greenhouse gases, as defined in~~
33 ~~subdivision (g) of Section 42801.1 of the Health and Safety~~
34 ~~Code.~~

35 ~~(c) The technology produces no discharges to surface or~~
36 ~~groundwaters of the state.~~

37 ~~(d) The technology produces no hazardous waste.~~

38 ~~(e) To the maximum extent feasible, the technology removes~~
39 ~~all recyclable materials and marketable green waste compostable~~
40 ~~materials from the solid waste stream prior to the conversion~~

1 process and the owner or operator of the facility certifies that
2 those materials will be recycled or composted.

3 (f) The facility where the technology is used is in compliance
4 with all applicable laws, regulations, and ordinances.

5 (g) The facility certifies to the board that any local agency
6 sending solid waste to the facility is in compliance with this
7 division and has reduced, recycled, or composted solid waste to
8 the maximum extent feasible, and the board makes a finding that
9 the local agency has diverted at least 30 percent of all solid waste
10 through source reduction, recycling, and composting.

11 SEC. 5. Section 40172.5 is added to the Public Resources
12 Code, to read:

13 40172.5. "Recovery" means the reuse, recycling, and
14 extraction of materials and energy from solid waste, including,
15 but not limited to, recycling, composting, and conversion
16 technology.

17 SEC. 6. Section 40201 of the Public Resources Code is
18 amended to read:

19 40201. "Transformation" means *the* incineration, pyrolysis,
20 distillation, or biological conversion other than composting or
21 combustion of solid waste in an oxygen-rich environment.
22 "Transformation" does not include composting, gasification, or
23 biomass conversion, or conversion technology.

24 SEC. 7. Section 41781.3 is added to the Public Resources
25 Code, to read:

26 41781.3. For any city, county, or regional agency source
27 reduction and recycling element submitted to the board after
28 January 1, 1995, the element may include, in the 50 percent of
29 solid waste required to be diverted, as specified in paragraph (2)
30 of subdivision (a) of Section 41780, solid waste subject to
31 recovery through conversion technology, if all of the following
32 conditions are met:

33 (a) The conversion technology project is in compliance with
34 all applicable laws, regulations, and ordinances.

35 (b) The board holds a public hearing in the city, county, or
36 regional agency jurisdiction within which the conversion
37 technology project is proposed, and, after the public hearing, the
38 board makes all of the following findings, based upon substantial
39 evidence in the record:

1 (1) The jurisdiction will continue to implement the recycling
2 and diversion programs in the jurisdiction's source reduction and
3 recycling element or its modified annual report.

4 (2) The facility complements the existing recycling and
5 diversion infrastructure and is converting solid waste that was
6 previously disposed.

7 (3) The facility maintains or enhances environmental benefits.

8 (4) The facility maintains or enhances the economic
9 sustainability of the integrated waste management system.

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SOLID WASTE TASK FORCE AGENDA

October 25, 2005

1:00 p.m to 3:00 p.m.

Item 4.2

**REGIONAL COMPREHENSIVE PLAN, DRAFT SOLID AND HAZARDOUS
WASTE CHAPTER, REVISED OUTLINE**

October 25, 2005

000007

Solid and Hazardous Waste Chapter

Existing Conditions Section Outline

Policy Premise – Sustainability, minimization, responsibility, equitable allocation of facilities, public safety

Issues –

- Growth and facilities (capacity)
- Mandates
Diversion credit flexibility
- Intergovernmental relations
Legislative and jurisdictional issues including railroad, rule making, etc.
- Transportation and transfer
- Urban form
- Economy
- New and emerging technologies

Performance Objectives and Evaluation

- Generation
 - Solid Waste
 - Electronic Waste
 - Hazardous Waste
 - Nuclear Waste
 - By County / City
- Diversion
 - Response to mandates
 - Recycling
 - Conversion Technologies
 - Constraints / Impediments
 - Beyond AB 939 - Notwithstanding mandates
 - Innovation / Successes
- Facilities development /Trends
- Technologies / Alternatives
- Opportunities / Looking Ahead

SOLID WASTE TASK FORCE AGENDA

October 25, 2005

1:00 p.m to 3:00 p.m.

Item 4.3

UNDERGROUND RULEMAKING

October 25, 2005

000009

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826

WILLIAM L. GAUSEWITZ
Director



**NOTICE OF PROPOSED RULEMAKING
AMENDMENT TO TITLE 1, CA CODE OF REGULATIONS REGARDING
ENFORCEMENT OF THE RULEMAKING PROVISIONS OF THE
ADMINISTRATIVE PROCEDURE ACT – (GOV. CODE 11340 *et seq.*)**

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the Office of Administrative Law (OAL) is proposing to take the action described in the Informative Digest.

A public hearing regarding this proposal is not currently scheduled. However, any interested person or duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be scheduled.

Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the Office of Administrative Law, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony if a public hearing is held, or who have requested notification of any changes to the proposal.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento CA, 95814.

Comments may also be submitted by facsimile (FAX) at (916) 323-6826 or by e-mail to staff@oal.ca.gov. Comments must be submitted prior to 5:00 p.m. on November 4, 2005.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 11342.4 and 11349.1(c) of the Government Code, and to implement, interpret or make specific Sections 11340.5, 11346.1, 11349.1, 11349.3, and 11349.6 of the Government Code, the Office of Administrative Law is considering changes to Division 1 of Title 1 of the California Code of Regulations as follows: 1) Adoption of Section 50 to make specific the requirements for a Finding of Emergency submitted to the Office of Administrative Law in connection with the adoption of emergency regulations; 2) Amendment

000010

of Section 55 to modify the procedures used by the Office of Administrative Law in the review of emergency regulations; and 3) Adoption of Chapter 2, to implement, interpret, and make specific Section 11340.5 of the Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The broad objective of this proposal is to provide guidance to state agencies regarding the adoption of emergency regulations, to improve the efficiency of OAL review of emergency regulations, and to clarify the process by which the prohibition against underground regulations is administratively enforced.

The Administrative Procedure Act (APA, Government Code section 11340 *et seq*) requires all regulations adopted by state agencies, including emergency regulations, to be adopted pursuant to specified procedures. The proposed regulations would enact implement, interpret, and make specific the provisions of the APA prohibiting agencies from employing rules not adopted pursuant to APA procedures (underground regulations) and governing adoption and approval of emergency regulations. Specifically, the proposal would:

1. Establish specific content requirements for a finding of emergency submitted to the OAL by a state agency in support of adopted emergency regulations;
2. Clarify and simplify the regulation governing OAL consideration of public comments in connection with its review of emergency regulations; and
3. Establish procedures that will be employed by the OAL in exercising its authority under Government Code 11340.5 to enforce the law prohibiting state agencies from employing underground regulations.

There are no comparable provisions of federal law related to this proposal.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

COSTS OR SAVINGS TO STATE AGENCIES

It is anticipated that any additional costs to state agencies will be absorbed within their existing budgets and resources.

BUSINESS IMPACT/SMALL BUSINESSES

The OAL has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal would impose no costs upon business. The proposal does not affect small businesses as defined by section 11342.610. The provisions of this proposal regarding emergency regulations apply only to state agencies and would have no impact upon private sector businesses. The provisions regarding underground regulation affect a private sector business only if it voluntarily chose to petition the OAL.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

The OAL has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS:

The OAL is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS: None

ALTERNATIVES

The OAL must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the adoption of this regulation is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Inquiries concerning the proposed adoption of this regulation and written comments may be directed to:

Bill Gausewitz, Director
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6221

or

OAL Notice of Proposed Rulemaking
September 16, 2005
Page 4 of 4

Linda Brown, Deputy Director
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-8915

INITIAL STATEMENT OF REASONS AND INFORMATION

The OAL has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Office of Administrative Law at 300 Capitol Mall, Suite 1250 Sacramento, CA 95814. These documents may also be viewed and downloaded from the OAL web site at www.oal.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named above

WEBSITE ACCESS

Materials regarding this proposal can be found at www.oal.ca.gov.

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
300 CAPITOL MALL, SUITE 1250
SACRAMENTO, CA 95814**

**AMENDMENT TO TITLE 1, CA CODE OF REGULATIONS REGARDING
ENFORCEMENT OF THE RULEMAKING PROVISIONS OF THE
ADMINISTRATIVE PROCEDURE ACT – (GOV. CODE 11340 *et seq.*)**

INITIAL STATEMENT OF REASONS

INTRODUCTION

The rulemaking provisions of the California Administrative Procedure Act (APA, Government Code 11340 *et seq.*) govern state agency rulemaking. Specifically, the APA establishes procedures that all state agencies must employ to adopt regulations lawfully. It also prohibits any state agency from employing any regulation that has not been lawfully adopted pursuant to APA procedures. Regulations enforced by a state agency that have not been so adopted are commonly called “underground regulations.”

The Office of Administrative Law (OAL) is charged with enforcement of the APA. This includes both the orderly review of adopted regulations (section 11340.1(a)) and the review of allegations that an agency is employing underground regulations (section 11340.5(b)).

When adoption of a regulation is necessary for the immediate preservation of public peace, health and safety, or general welfare, a state agency is permitted to adopt emergency regulations pursuant to section 11346.1. Emergency regulations go into effect immediately, thus denying members of the public the opportunity to participate in development of the regulation before those who are regulated must comply with the rules. In reviewing emergency regulations, therefore, OAL not only reviews for compliance with the substantive standards required by section 11349.1, but also evaluates, pursuant to section 11349.6, whether or not the regulations are, in fact, necessary for the immediate preservation of the public peace, health and safety, or general welfare.

The proposed regulations implement, interpret, and make specific the provisions of the APA dealing with emergency regulations and underground regulations. They do so by defining requirements for an agency’s required finding of emergency to establish the need to adopt emergency regulations, by simplifying the process by which OAL accepts and considers comments upon proposed emergency regulations, and by creating a structure by which allegations that an agency is employing underground regulations may be evaluated by OAL.

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is as follows:

PROPOSED SECTION 50 – FINDING OF EMERGENCY

Government Code section 11346.1 provides that an agency may adopt an emergency regulation when it finds that the regulation is “necessary for the immediate preservation of the public peace, health and safety or general welfare.” The facts demonstrating the need for emergency regulations must be included in a finding of emergency, which is filed with OAL simultaneously with the filing of the proposed regulation. OAL may not approve an emergency regulation unless it concurs in the agency’s determination of the existence of an emergency (Government Code section 11349.6). Even if both an the adopting agency and OAL determine that emergency regulations are necessary, the courts may invalidate them on the basis of its independent judgment that the facts recited in the finding of emergency do not constitute an emergency (Government Code 11350).

The law presently offers little guidance in determining whether or not an emergency situation exists. The APA and the current OAL regulations offer no such guidance. Court decisions are few and inconsistent, reflecting the case-by-case context in which the issue is addressed by the courts. There are no reported decisions by the California Supreme Court analyzing this issue. Appellate court decisions provide such legal guidance as is available, sparse though it is.

In *Schenley Affiliated Brands V. Kirby* (1971) 21 Cal.App.3d 177, 98 Cal.Rptr. 609, the court said that “[w]hat constitutes an emergency is primarily a matter for the agency's discretion”. In practice, this amounts to a presumption that a finding of emergency is valid. Neither OAL nor the courts are obliged to defer to the judgment of the agency in this matter. Each is required under the APA to evaluate this question separately. In the two leading cases that followed *Schenley* and interpreted this provision of the APA, the Court of Appeals upheld the finding of emergency in one case (*Doe v. Wilson* (1998) 31 Cal.App.3d 932, 107 Cal.Rptr. 596) and overturned the finding in the other (*Poschman v. Dumke* (1973) 57 Cal.App.4th 296, 67 Cal.Rptr.2d 187).

Although an agency’s decision to treat a situation as an emergency is presumptively correct, failure to demonstrate an adequate factual basis for this decision in a finding of emergency will defeat the presumption and result in disapproval of the regulation, either by OAL pursuant to section 11349.6(b), or by the courts pursuant to section 11350(a). The discussions in court opinions evaluating this issue are instructive, but they create no clear guidance that may be followed by rulemaking agencies to determine whether or not a particular set of facts demonstrate necessity as required by section 11346.1. Proposed section 50 is necessary to provide such guidance.

The most comprehensive discussion of what constitutes an emergency is that contained in *Sonoma County Organization of Public/Private Employees, Local 707, SEIU, AFL/CIO v. County Of Sonoma* (1991) 1 Cal.App.4th 267, 277-278, 1 Cal.Rptr.2d 850. This case examined a local emergency ordinance and was not interpreting the APA. However, its general discussion of the meaning of the “word 'emergency' as used in legislative enactments” is illuminating. In *Doe v. Wilson* the Court of Appeal adopted the reasoning of *Sonoma County* in its examination of the APA standard.

Section 50 of the regulation is necessary to implement, interpret, and make specific the provisions of Government Code sections 11346.1 and 1349.6, and the associated case law, by more precisely defining what must be included in a finding of emergency in order to demonstrate that adoption of a regulation is necessary for the immediate preservation of public peace, health and safety or general welfare.

Subsection (a) of section 50 requires that a finding of emergency contain specific facts to support the existence of the emergency. It specifies that the facts must demonstrate the existence of a situation posing serious harm evidenced by an imminent and substantial threat to the public peace, health and safety, or general welfare. This standard derives from *Sonoma County*.

Subsection (a) of section 50 also identifies various factors (expediency, convenience, general public need and speculation) that are inadequate when used alone to support a finding of emergency. These factors are also derived from *Sonoma County*. Specifying that these factors alone cannot support a finding of emergency is necessary to interpret the APA requirement that a finding of emergency must be based upon “specific facts showing the need for immediate action” (Government Code section 11346.1(b)).

Together the “imminent and substantial threat” standard and identification of the several factors that will not alone support a finding of emergency are necessary to provide guidance to rulemaking agencies in evaluating the adequacy of a finding prior to submitting it to OAL for review. It is also necessary to clarify the standards to be applied by OAL in reviewing findings of emergency. This guidance is not otherwise available in statute or regulation and is not specific in case law.

Subsection (b) of section 50 deals with the issue of foreseeability. *Sonoma County* described emergency as “an unforeseen situation calling for immediate action.” In *Doe v. Wilson* this description was adopted with respect to interpreting the APA. Unforeseeability cannot be reasonably be considered to be a definitive legal requirement. It has no foundation in the statutory language of the APA. Under the statutory standard, if a situation is clearly “necessary for the immediate preservation of public peace, health and safety or general welfare,” the fact that the situation may have been foreseen does not prohibit the adoption of emergency regulations to address this situation.

However, the fact that an agency was aware of a situation for a substantial time prior to proposing emergency regulations and did not attempt to address the situation offers strong evidence that immediate action is not necessary to address the situation. If an agency has deferred action for a considerable period, it can be reasonably inferred that the situation is not urgent enough to use emergency regulations and, thus, to deny the right for public participation offered through regular rulemaking. Under proposed Subsection (b) of section 50 the burden of demonstrating the need for immediate action will be higher when a situation was foreseen in order to overcome the presumption that the agency’s delay in taking action demonstrates lack of immediate need.

Subsection (b) of section 50 accomplishes this by requiring that, when a situation existed and was known by the rulemaking agency in time to have been addressed through regular

rulemaking, it will be presumed by OAL that the situation does not demand immediate action. This presumption may be overcome by adequately demonstrating in the finding of either that the agency's delay in acting was reasonable, or that the regulation responds to a "crisis situation, emergent or actual" in which the public interest clearly requires immediate action. The "crisis situation" standard is derived directly from *Poschman v. Dumke*. This rule is necessary to make specific the requirements that agencies will be expected to meet when proposing emergency regulations to address foreseeable situations that could have been addressed through regular rulemaking.

PROPOSED SECTION 55 AMENDMENTS – OAL REVIEW OF PUBLIC COMMENTS ON EMERGENCY REGULATIONS

The current provisions of 1 CCR 55 were adopted in 1990, before electronic mail became commonplace. They are based upon communication primarily through postal service mail. The proposed changes are intended to simplify communication when the OAL is reviewing proposed emergency regulation and to provide the OAL with greater flexibility during this review.

Subsection (a) of section 55 – The amendment to this subsection changes the requirement for OAL to consider comments in connection with review of emergency regulations from being mandatory to being permissive. This is necessary to avoid the interpretation that OAL may not consider comments submitted in connection with its own rulemaking and to allow comments to be considered pursuant to 1 CCR 270, which is newly-adopted in this rulemaking and which permits consideration of comments in connection with the review of underground regulations.

Subsection (b) of section 55 – The proposal changes the requirement from "shall" to "may". The use of the mandatory "shall" in this subsection is inconsistent with provisions in the statute and elsewhere in the regulation allowing the OAL to approve regulations without allowing public comment. While it is unusual for regulations to be approved so rapidly, in some circumstances it is necessary.

Subsection (b)(4) of section 55 – Under the current rule the OAL is prohibited from considering any comment unless the commenter certifies that he or she has provided the rulemaking agency with a copy of the comments. This frequently results in greater work for the OAL to compel a commenter to provide the certification than it would take for the OAL to forward the comments directly to the agency. The proposed change is necessary to improve the efficiency of the review process by focusing upon whether or not the agency received the comment rather than focusing upon how the comment was provided.

Subsection (c) of section 55 – This amendment eliminates the requirement that the OAL return noncompliant comments to the sender. This is necessary to improve the efficiency of the OAL review. The current provision is also anachronistic in an environment in which comments are commonly transmitted via e-mail.

Subsection (f) of section 55 – This paragraph is amended to apply only when OAL actually considers comments. This is necessary to conform this subsection to the proposed revision of Subsection (b) of section 55, which clarifies that OAL consideration of comments is permissive

rather than mandatory. This subsection is also amended to eliminate the requirement that communication with the contact person must be by telephone. This is necessary to allow e-mail contact to serve for compliance with this rule.

Subsection (h) of section 55 – This amendment provides that multiple substantially similar comments may be treated as a single comment for purposes of this section. The strict requirements of the current rule would dictate that every copy of a comment sent in an orchestrated letter writing effort be transmitted to the rulemaking agency. There is no public policy benefit to transmitting multiple substantially similar comments to the agency. This proposal is necessary to improve the efficiency of the OAL review of emergency regulations.

PROPOSED CHAPTER 2 – UNDERGROUND REGULATIONS

The APA prohibits state agencies from employing regulations that have not been adopted pursuant to the APA rulemaking provisions (Government Code 11340.5). When an agency violates this section by enforcing a rule that has not been properly adopted it is said to be using an “underground regulation.” Section 11340.5 also authorizes OAL to enforce this section through the issuance of “determinations”. In response to evidence that an agency is employing an underground regulation, OAL may issue a determination as to whether or not the agency’s action in fact violates the section. The OAL authority to issue determinations is discretionary; OAL is permitted but not required to perform this function.

OAL performed this enforcement function from the mid-1980s through the end of 2002. In response to budget reductions that caused staff reductions, the office was required to reduce services and eliminated this function. OAL repealed its regulations implementing Government Code section 11340.5 on January 21, 2003. Since then the only mechanism for enforcing section 11340.5 has been litigation. Litigation based upon an allegation that an agency is employing an underground regulation is very costly. The OAL enforcement process was enacted to provide a relatively inexpensive and cost-effective method to enforce Government Code section 11340.5. The proposed regulation is necessary to restore this process.

The Legislature increased the OAL budget and staffing level for Fiscal Year 2005-2006 with specific instructions to the office to employ the needed attorneys and to restore its program to enforce section 11340.5. The proposed regulation is necessary to satisfy this legislative mandate.

Section 250 – This section defines terms used in this chapter. The definition of the term “underground regulation” uses the terminology of Government Code 11340.5(a) and (b). This is needed for clarity so that the remainder of the Chapter does not have to employ repeatedly the same 50 words to convey a two-word concept. The definitions of “OAL” and “APA” are necessary for consistency of terminology between the current Chapter 1 of the regulations and the proposed Chapter 2. The definition of “interested person” delineates who may file a petition pursuant to this chapter. The definition excludes state agencies from filing petitions. This definition is necessary to avoid a circumstance in which OAL is expected to serve as a referee in a dispute between competing state agencies.

Section 260 – This section defines the requirements for submission of a petition seeking an OAL determination. It is necessary to ensure that petitions contain adequate information for OAL to evaluate whether or not to accept the petition.

Subsection (a) of section 260 – This subsection restates OAL’s authority to issue a determination. This is necessary to give effect to the limiting definition of “interested person”, thus establishing the limit upon who may file a petition pursuant to this chapter. This subsection also requires petitioners to provide a copy of the petition to the agency alleged to have employed the underground regulation. This is necessary so that the agency may begin review of the petition at the earliest possible time.

Subsection (b) of section 260 – This subsection specifies the content of a petition. This is necessary to provide petitioners with guidance regarding preparation of a petition and to ensure that each petition contains adequate information for OAL to evaluate whether or not to accept it.

Section 270 – This section generally governs the process by which OAL evaluates petitions alleging the use of underground regulations to determine whether or not to accept them, and it establishes procedures for review of those petitions it accepts.

Among other things, section 270 corrects problems that developed in the earlier enforcement program. In particular, it makes it clear that OAL will not accept petitions for determination if it does not have adequate resources to respond to the petition in a timely manner. The prior program, which was terminated in early 2003, required OAL to accept any petition meeting specified criteria. This resulted in acceptance of far more petitions than the office could actually address. As a result, OAL developed a backlog of several years in issuing determinations. The OAL review program established in section 270 corrects this problem by establishing a firm schedule for OAL review of petitions, through provisions making it clear that the decision to accept or not accept a petition is a discretionary act by OAL, and by specifying that the availability of staff resources shall be a criterion to be employed by OAL in deciding whether or not to accept a petition. These provisions are necessary to prevent the development of a backlog of requests such as occurred during the prior program.

Subsection (a) of section 270 – This subsection restates OAL’s authority to issue a determination upon receipt of a properly completed petition. This is necessary to establish that proper completion of a petition is a precondition for issuance of a determination. Under the previous enforcement program OAL was often forced to expend substantial resources to discover facts necessary to evaluate a request for determination. By requiring the submission of a completed petition, Subsection (a) of section 270 avoids this problem and maximizes the efficiency of efforts by OAL staff.

Subsection (b) of section 270 – This subsection requires OAL to complete its review of a petition within 30 days. It specifies that OAL may consult with the petitioner and the agency in conducting this review. This subsection is necessary to ensure expeditious and orderly consideration of petitions. The 30-day period was selected as a reasonable compromise between the need for expeditious response to petitions and the need to provide careful analysis of and consultation regarding petitions.

Subsection (c) of section 270 – This subsection specifies that acceptance or non-acceptance of a petition is a discretionary act by OAL and establishes criteria that OAL shall consider in making the decision whether or not to accept the petition. This is necessary to clarify that there is no basis for anybody to demand a determination as a matter of right, and to provide guidance to OAL and the public regarding what considerations will be involved in the decision whether or not to accept a petition. The proposed subsection identifies factors that, at a minimum, are to be considered in evaluating petitions. These criteria are necessary in order to advise petitioners of the type of factors that will be considered by OAL in reviewing petitions and to provide basic uniformity in this review.

Subsection (d) of section 270 – This subsection establishes procedure in the event that OAL declines a petition. It requires the declination to be accompanied by a statement that the decision reflects in no way upon the merit of the petition. It is necessary to establish an orderly process for declining a petition and to clarify to the petitioner, the agency, and to the courts that OAL's decision not to consider the petition is not to be interpreted as any type of judgment on the merits of the petition. Since OAL may be compelled to decline petitions simply due to workload constraints, it is important to establish a formal record that no substantive implications should be imputed to this decision.

Subsection (e) of section 270 – This subsection establishes initial procedural steps when OAL accepts a petition. It is necessary in order to provide an orderly process for beginning the evaluation of accepted petitions and to establish the right of the public to submit comments on the issue to OAL. The requirement for publication of the petition in the California Regulatory Notice Register is necessary to notify the public that the issue is being considered. This will advise members of the public that they may, if they choose, participate in the process by submitting comments pursuant to this subsection.

Subsection (f) of section 270 – This subsection establishes the agency's right to respond to the petition. It establishes a 30-day requirement for submitting the response to OAL and requires the agency to provide the response simultaneously to the petitioner. This subsection is necessary to allow an agency to respond formally to petitions and to ensure that the petitioner obtains a copy of the agency response. This subsection also provides that if the agency elects not to file a response, OAL may consider the facts contained in the petition to be undisputed. This is necessary to specify the potential impact of a decision by an agency not to file a response to an accepted petition. The 30-day limit was chosen as a reasonable compromise between the need for expeditious processing of the petition and the need to provide agencies with adequate time to prepare and submit a complete response to the petition.

Subsection (g) of section 270 – This subsection allows a petitioner, within 15 days, to reply to the agency's response to the petition. This provision is necessary to provide a more complete record for OAL to evaluate in making its determination. The 15-day limit was chosen as a reasonable compromise between the need for expeditious processing of the petition and the need to provide petitioners with adequate time to prepare and submit a complete reply to the agency's response. The time for the petitioner's reply is less than the time for the agency's response

because the task of replying to a specific response is narrower and more precise than the task of preparing a general response to the petition.

Subsection (h) of section 270 – This subsection requires OAL to complete its review of the petition and issue its determination within 150 days after publication of the petition pursuant to subsection (e). This subsection is necessary to establish an explicit time limit for evaluation of petitions and issuance of determinations. The 150 day limit creates a total time for completing the process of approximately 6 months. This was chosen as a reasonable limit for the entire process, allowing adequate time for OAL to complete its analyses of petitions while also establishing a maximum total time limit, thus avoiding the backlog that characterized the prior program.

Subsection (i) of section 270 – This subsection allows OAL to permit a longer response time to state agencies that are subject to the Bagley-Keene Open Meeting Act. Many of these agencies meet quarterly or even less frequently. The extension cannot result in a determination being issued after the deadline established in subsection (h). This provision is necessary to accommodate the particular requirements imposed by state agencies that are subject to the Bagley-Keene Open Meeting Act.

Section 280 – This section creates a procedure whereby an agency that is the subject of a petition may terminate the proceedings pursuant to this chapter by certifying that it has stopped the practice alleged by the petition to be an underground regulation. This provision is necessary to avoid unnecessary continuation of proceedings under this chapter and to allow agencies to control the outcome of the proceedings by changing their practices.

STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
300 CAPITOL MALL, SUITE 1250
SACRAMENTO, CA 95814

AMENDMENT TO TITLE 1, CA CODE OF REGULATIONS REGARDING
ENFORCEMENT OF THE RULEMAKING PROVISIONS OF THE
ADMINISTRATIVE PROCEDURE ACT – (GOV. CODE 11340 *et seq.*)

PROPOSED TEXT

Text proposed to be added to the California Code of Regulations is displayed in *italic* type.
Text proposed to be deleted is displayed in ~~strikeout~~ type.

Section 50. Findings of Emergency.

(a) A finding of emergency pursuant to section 11346.1 of the Government Code shall contain specific facts demonstrating that the proposed emergency regulation responds to a situation calling for immediate action to avoid serious harm evidenced by an imminent and substantial threat to the public peace, health and safety, or general welfare. A finding of emergency based only upon expediency, convenience, general public need, or speculation, shall not be adequate to demonstrate the need for immediate action.

(b) If the situation identified in the finding of emergency existed and was known by the agency adopting the emergency regulation in sufficient time to have been addressed through a nonemergency regulation adopted in accordance with the provisions of the APA, OAL shall presume that the purported emergency was foreseeable and that the regulation is not necessary for the immediate preservation of public peace, health and safety, or general welfare. This presumption may be overcome by facts in the finding of emergency doing either of the following:

(1) Explaining the agency's failure to address the situation through nonemergency rulemaking and demonstrating that this failure was reasonable.

(2) Demonstrating the existence of a crisis situation, emergent or actual, posing such an imminent and substantial threat to public peace, health and safety, or general welfare, that further delay would cause serious harm and be clearly contrary to the public interest.

NOTE

Authority cited: Sections 11342.4 and 11349.1(c) of the Government Code. Reference: Sections 11346.1 and 11349.6 of the Government Code; Poschman v. Dumke (1973) 31 Cal.App.3d 932, 107 Cal.Rptr. 596; Sonoma County Organization Of Public/Private Employees, Local 707, SEIU, AFL/CIO v. County Of Sonoma (1991) 1 Cal.App.4th 267, 1 Cal.Rptr.2d 850; and Doe v. Wilson (1997) 57 Cal.App.4th 296, 67 Cal.Rptr.2d 187;

Section 55. OAL Review of Public Comments.

(a) OAL ~~shall~~ *may* consider comments submitted directly to OAL by the public ~~only~~ in connection with emergency regulation reviews, including the review of an emergency regulation proposed to be readopted. OAL shall not consider comments submitted directly to OAL by the public when OAL is reviewing:

(1) certificate of compliance regulation filings under Government Code sections 11346.1(e) and 11349.6(d); or

(2) non-emergency regulation filings under Government Code section 11349.3.

(b) In reviewing emergency regulations pursuant to Government Code section 11349.6(b), OAL shall *may* consider comments received from the public concerning the proposed emergency adoption, amendment, or repeal, including comments regarding the finding of emergency, when all of the following conditions are met:

(1) The comments are submitted to OAL in writing;

(2) The comments are received by OAL prior to the time OAL makes its decision regarding the approval or disapproval of the regulations and within five calendar days after the receipt of the regulations by OAL;

(3) The comments contain a notation that they are submitted to OAL for consideration in connection with an emergency regulation review and identify the topic of the emergency regulations to which they relate; and

(4) ~~A written statement accompanying the comments submitted to OAL confirms~~ *OAL has confirmed* that a copy of the comments has been transmitted to the rulemaking agency's contact person for the emergency regulation filing, as designated by the rulemaking agency on the Form 400.

(c) OAL shall not consider comments concerning emergency regulations unless the comments meet all of the conditions specified in subsections (b)(1) through (4). ~~When OAL receives comments concerning emergency regulations which do not meet all of these conditions, OAL shall return the comments to the commenter without considering the comments.~~

(d) Any person who submits comments concerning emergency regulations to OAL shall first transmit a complete copy of the comments to the rulemaking agency's contact person for the emergency regulation filing as designated by the rulemaking agency on the Form 400.

(e) OAL shall provide any person interested in submitting comments concerning emergency regulations with the name, address, and telephone number of the rulemaking agency's contact person for the emergency regulation filing as designated by the rulemaking agency on the Form 400.

(f) When OAL ~~receives~~ *considers* comments concerning emergency regulations which meet the conditions for consideration set forth in subsections (b)(1) through (4), OAL shall ~~telephone~~ *contact* the rulemaking agency within one working day after the receipt of the comments to confirm that the comments are being considered by OAL. OAL shall inform the rulemaking agency at that time that the agency has the opportunity to rebut or otherwise respond to the comments.

(g)(1) Except as provided in subsections (2) and (3), OAL shall consider rulemaking agency rebuttals or responses to comments concerning emergency regulations if, and only if, they are submitted to OAL in writing and are received by OAL within eight calendar days after the receipt of the regulations.

(2) If the eighth calendar day falls on a Saturday, then the agency rebuttal or response is due on the seventh calendar day.

(3) If there are one or more state holidays between the fifth calendar day and the eighth calendar day after the regulations were filed with OAL, then the agency rebuttal or response is due on the ninth day. However, if that ninth calendar day falls on a Saturday, Sunday, or a state holiday, the agency's rebuttal or response is due by 10:00 a.m. of the last day the regulation must be reviewed by OAL in accordance with Government Code section 11349.6(b).

(h) For purposes of compliance with this section, OAL may elect to treat multiple substantially similar comments received from different sources as a single comment submission.

NOTE

Authority cited: Sections 11342.4 and 11349.1, Government Code. Reference: Sections 11346.1, 11349.1, 11349.3 and 11349.6, Government Code.

Chapter 2. Underground Regulations

Section 250. Definitions

The following definitions shall apply to the regulations contained in this chapter:

(a) "Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule or any rule governing a state agency procedure that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA.

(b) "APA" and "OAL" have the same definitions as in Section 1.

(c) "Interested person" means any person, other than a state agency, who submits a petition to OAL alleging that a state agency has issued, used, enforced, or attempted to enforce an underground regulation in violation of section 11340.5 of the Government Code.

NOTE

Authority cited: Section 11342.4 of the Government Code. Reference: Section 11340.5 of the Government Code.

Section 260. Submission of Petitions Regarding Underground Regulations

(a) Any interested person may submit a petition to OAL alleging that a state agency has issued, used, enforced, or attempted to enforce an underground regulation and seeking a determination from OAL pursuant to Section 11340.5 of the Government Code. The petitioner shall submit a copy of the petition and all attachments to the agency prior to submitting it to OAL.

(b) Any petition seeking a determination shall include all of the following:

(1) The name and contact information of the petitioner.

(2) The name and contact information of the agency that has allegedly issued, used, enforced, or attempted to enforce an underground regulation.

(3) A complete description of the particular underground regulation, and a copy of any written expression of the underground regulation. If the purported underground regulation is found in an agency manual, the petition shall identify the specific provision of the manual alleged to comprise the underground regulation.

(4) A description of the actions of the agency showing that it has issued, used, enforced, or attempted to enforce the underground regulation.

(5) The legal basis for concluding that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code and that no express statutory exemption to the requirements of the APA is applicable.

(6) Information demonstrating that the petition raises an issue of considerable public importance requiring prompt resolution.

(7) Certification that the petitioner has submitted a copy of the petition and all attachments to the agency.

NOTE

Authority cited: Section 11342.4 of the Government Code. Reference: Section 11340.5 of the Government Code.

Section 270. OAL Review of Petitions Regarding Underground Regulations

(a) Upon receipt of a petition complying with this Chapter from an interested person, OAL may issue a determination in accordance with this chapter to respond to the petition.

(b) No later than 30 days after receipt of a complete petition filed pursuant to this chapter, the office shall determine whether or not to consider the petition on its merits, in its entirety or in part, unless, prior to the end of the 30-day period, the agency submits to OAL a certification pursuant to section 280. OAL may consult with the petitioner and the agency to obtain additional information for its use in determining whether or not to consider the petition on its merits.

(c) The decision to consider or to decline to consider a petition shall be at the exclusive discretion of OAL. Factors considered in deciding whether or not to accept a petition shall include, but are not necessarily limited to,

(1) The degree to which the petition raises an issue of considerable public importance requiring prompt resolution.

(2) Additional relevant information, if any, obtained pursuant to subsection (b).

(3) Availability of OAL personnel to complete the review of the petition pursuant to the time limits established by this chapter.

(d) If OAL declines to consider the petition, it shall immediately advise the petitioner and the agency of the decision and specifically indicate that the decision in no way reflects on the merits of the underlying issue presented by the petition.

(e) If OAL decides to consider the petition on its merits, it shall notify the petitioner and the agency of this decision and shall publish the petition or a summary of the petition in the next California Regulatory Notice Register, giving notice to the public that comments on issues raised by the petition may be submitted to OAL. Any person submitting comments to OAL shall simultaneously provide a copy of the comments to the agency and the petitioner.

(f) The agency may submit a response to the petition to OAL. No response may be considered by OAL unless the agency has provided a copy of the response to the petitioner simultaneously with submission of the response to OAL. Any response by the agency shall be submitted to OAL within 30 calendar days of the publication of the petition in the California Regulatory Notice Register. If the agency elects not to file a response, OAL may consider the petition to be undisputed.

(g) The petitioner may submit to OAL a reply to the agency's response not later than 15 calendar days after the agency response was provided to the petitioner pursuant to subsection (f).

(h) After the time for the petitioner to submit a reply to the agency's response, and no later than 150 days after publication of the accepted petition in the California Regulatory Notice Register, OAL shall issue a determination as to whether or not the agency has issued, used, enforced, or attempted to enforce an underground regulation.

(i) Notwithstanding subsection (f), OAL may extend the time for an agency to file a response to a petition if the agency is a "state body" as defined in Section 11121 of the Government Code and the agency's response requires action taken at a meeting subject to the Bagley-Keene Open Meeting Act (commencing with Section 11120 of the Government Code), except that no extension pursuant to this subsection may be granted if it would prevent OAL's compliance with subsection (h).

NOTE

Authority cited: Section 11342.4 of the Government Code. Reference: Sections 11340.5 of the Government Code.

Section 280. Suspension of Actions Regarding Underground Regulations

(a) Any action of OAL or an agency pursuant to this chapter in connection with a petition shall be suspended if OAL receives a certification from the agency that it will not issue, use, enforce, or attempt to enforce the alleged underground regulation along with proof that the certification has been served on the petitioner. This certification shall be made by the head of the agency or a person with a written delegation of authority from the head of the agency in the form specified by Section 2015.5 of the Code of Civil Procedure.

(b) Upon receipt of this certification and proof of service, OAL shall do all of the following:

(1) File the petition and the certification with the Secretary of State.

(2) Publish a summary of the petition and the certification in the California Regulatory Notice Register.

(3) Provide a copy of the certification to the petitioner.

NOTE

Authority cited: Section 11342.4 of the Government Code. Reference: Sections 11340.5 of the Government Code.

SOLID WASTE TASK FORCE AGENDA

October 25, 2005

1:00 p.m to 3:00 p.m.

Item 5.1

RENEW L.A.

October 25, 2005

RENEW LA

SYNOPSIS

Creating a New Paradigm

This Resource Management Blueprint, called RENEW LA, presents a bold, far-reaching, and comprehensive plan for the recovery and beneficial use of material now being buried in landfills. This requires a bold shift from a system based on "waste disposal" to one of "resource recovery", a shift not just in technology, but in strategies, behavior, and consciousness, as well. To carry out this plan will require effort from residents, vision from industry, and leadership from government.

In laying out a course of action for the next 20 years, this plan builds on key elements of our existing programs and infrastructure, and combines them with new conversion technology (CT). This will achieve unparalleled levels of resource recovery in the form of recyclables; soil amendments; renewable fuels, chemicals, and of great importance – green energy. The plan also achieves massive reductions in the quantity of residue material disposed in landfills and its associated environmental impacts.

Key qualities incorporated into this blueprint include:

- Sustainability
- Conservation (virgin materials and land)
- Resource recovery and renewable energy
- Education and outreach
- Environmental justice
- Job creation and economic growth

Zero Waste Goal

Much as the California Integrated Waste Management Act of 1989 (AB 939) did to launch the recycling programs which have led to a prolific recycling rate in the City of Los Angeles of over 60%, a new blueprint is needed to reach the ultimate platform - "zero waste". As defined by the California Integrated Waste Management Board (CIWMB), a zero waste philosophy includes a broad array of programs and policies within an overall framework of sustainability.

- Promoting the management of materials to their highest and best use

- Protecting public health and the environment
- Maximizing waste reduction and recycling
- Ensuring that products are made and packaged to be reused, repaired or recycled
- Promoting front-end design efficiency in manufacturing to conserve virgin materials and reduce waste
- Harnessing the energy potential of "waste" by utilizing new technology to convert the material directly into green fuel, gas, and/or electricity

The goal of zero waste as defined in the RENEW LA plan is to reduce, reuse, recycle, or convert the resources now going to disposal so as to achieve an overall diversion level of 90% or more by 2025, and to dispose of only inert residual.

Where We Are Now

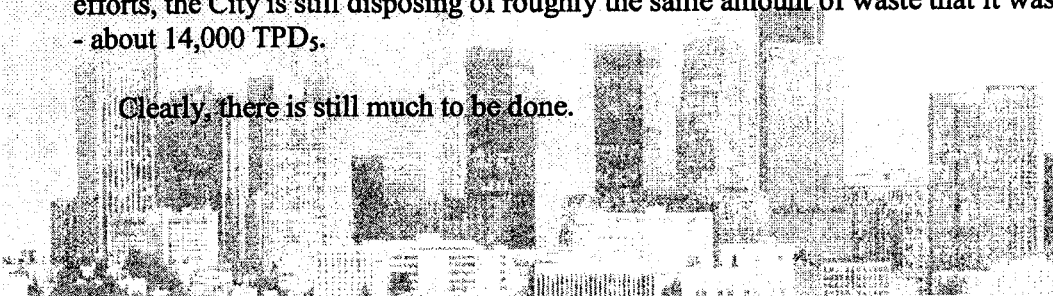
Much of the recent landscape throughout California has been dominated by measures to comply with AB 939. In 2002, the City of Los Angeles generated a total of 9.3 million tons of waste, diverted 5.8 million tons of that, and disposed of 3.5 million tons - for an official 62% recycling level. This represents 22,000 tons diverted from landfills per day on a five day per week basis (TPD₅). In 1994, the City Council raised the bar even further by adopting a 70% diversion goal to be achieved by the year 2020.

Over the past 15 years, the City, through its Bureau of Sanitation, and private industry (including 128 permitted haulers, scores of recyclers, and several Material Recovery Facilities and transfer stations) have implemented many strong recycling programs including curbside collection of residential recyclables and greenwaste, sorting and recycling of construction and demolition debris, and pilot programs in the multi-family and commercial sectors.

This is the good news.

Conversely, the City of Los Angeles is in some ways a victim of its own success in that the growth in population, commerce and per capita waste generation has kept pace with all AB939 efforts. This is reflected in the fact that today, despite our best recycling efforts, the City is still disposing of roughly the same amount of waste that it was in 1990 - about 14,000 TPD₅.

Clearly, there is still much to be done.



Getting To Where We Need To Go (The Blueprint)

Efforts on the national and state levels to reduce packaging, mandate “Extended Producer Responsibility” (EPR), and encourage reduced consumption patterns by our populace, are targets for other efforts. However, this plan focuses on the “end of the pipe” so to speak, the material still going to landfill disposal. It relies on two key areas of action:

- the enhancement and growth of existing diversion programs; and
- the development of CT facilities to process residual material

This report makes no recommendations regarding the types of CT to be developed, but highlights the five basic ones currently being evaluated and developed in Los Angeles and other U.S. cities, and already in operation in many other countries. They are:

- Gasification/Pyrolysis
- Anaerobic Digestion
- MSW Composting
- Autoclaving
- Fermentation

In order to achieve a 90+% diversion rate, the RENEW LA blueprint targets the largest of the disposal wastestreams: the black can material from single family homes, multi-family, and commercial waste.

The plan recommends development over the next 20 years of seven regional CT facilities, preferably with one located in each of the six refuse collection districts (Harbor, South Los Angeles, Western, North Central, East Valley and West Valley), plus one sited as opportunity presents, including perhaps in a neighboring jurisdiction. Constructed initially to process 500 to 750 TPD, these plants would be expanded over time to larger capacities in the 1,250 to 3,000 TPD range, with a total cumulative capacity of 14,500 TPDs. Depending on the mix of CT developed, these plants could generate 100-340 MW of renewable energy towards DWP’s 20% Renewable Energy Standard (RPS) goal.

Coupled with aggressive efforts to increase source-separation programs, and with the addition of pre-processing through Material Recovery Facilities (MRFs) or autoclave systems, these CT plants could achieve the results shown in the table on the following page - an unprecedented, but achievable 93% diversion. Along with this high level of diversion would come:

- Drastic reduction in truck and rail transportation and their associated air quality and traffic congestion impacts
- Creation of construction jobs and permanent operational “green collar” jobs in pre-processing plants, CT facilities, and re-manufacturing operations where beneficial use is made of recovered material
- Conservation of limited, virgin resources
- Significant reduction in environmental impacts from landfills
- Equality in shared system components and responsibilities
- Generation of green, renewable energy



RENEW LA PLAN (Zero Waste Target 2025)

Year	(TPD) (***)				Overall Diversion (%)
	Citywide Generation(*)	Existing Diversion Programs(**)	Total New Diversion	Final Disposal Tonnage	
2005	37,959	23,673	0	14,286	62
2010	41,910	26,137	2,365	13,408	68
2015	46,272	28,857	6,955	10,460	77
2020	51,088	31,861	12,675	6,552	87
2025	56,405	35,177	17,085	4,143	93

(*) Assumes 2% growth in each sector per year due to population and commerce increase
Year 2005 based on actual tonnages reported by Bureau of Sanitation for 2002 then
extrapolated at 2% per year to 2025

(**) Assumes 2% growth in existing programs per year

(***) Assumes 5 days per week

 Existing programs
 With RENEW LA programs

Economics of the Plan

On the surface, there appears to be no “cheaper” waste management system than a hole in the ground, which has been and continues to be the bedrock of our arcane waste management system. With local landfill tipping fees still in the \$20-\$30 per ton range, perhaps the lowest of any metropolitan area in the U.S., it may *seem* foolhardy to propose a new system based on CT facilities with tipping fees in the \$50 per ton range.

However, as detailed in this plan, several points show otherwise:

- This plan proposes not the *cheapest* system, but the *highest and best* system. A true cost/benefit analysis, with all the “externalities” included (**Costs:** transportation impacts, health impacts, environmental degradation, resource depletion, future liabilities; **Benefits:** job creation; home-grown, renewable fuel and energy; resource conservation), would show that the total societal cost of the landfill-based waste disposal system is much higher than the posted tipping fees. In fact, it could actually be more expensive than a new system based on CT and maximum recovery of resources.
- As a society, we have successfully made a similar paradigm shift with substantially higher costs when we adopted AB 939 and implemented the current diversion programs and infrastructure.

- The technologies proposed here are long-term solutions which will ultimately compete, not with cheap local landfills (which are rapidly filling), but with transfer and long haul by truck or rail to remote desert landfills. As calculated by the Los Angeles County Sanitation Districts, their complete rail haul system will cost \$60 per ton (present dollars), or nearly \$70 per ton (with inflation) when it starts operating in late 2009. Local CT facilities could compete well in this range, and some indicators show it considerably lower.

Therefore, in the long run, and in our drive for renewable, sustainable living, the highest and best system is actually the most effective, efficient, and desirable.

Policies and Action Items

This plan will not succeed without strong leadership from the City Council, and support from our State and Federal representatives. Bold actions will be required to facilitate a transition to the new paradigm, particularly in the initial years, when “cheap” landfills are still available.

To facilitate the transition from a disposal to a recovery based system, it will be necessary for the City to adopt policies that either “incentivize” diversion activities, “penalize” disposal, or both. The RENEW LA plan presents over 50 new or revised policies for consideration, as well as highlighting the most important 12 to be adopted during the critical first five years (2005-2010). Highlights include:

- Establish a RENEW LA oversight committee
- Adopt the RENEW LA blueprint and a Zero Waste Policy
- Modify zoning codes to facilitate project development
- Site and develop the first two CT plants
- Mandate a reduction in City-collected MSW going to the Sunshine Canyon Landfill over the next five years from the current 3,500 TPD₅ to 500 TPD₅.
- Provide reductions on City taxes based on companies’ recycling performance
- Add residential foodwaste to the green can program
- Expand commercial and multi-family pilot recycling programs

Education and Consensus

Finally, this plan provides a structure around which to build consensus. In doing so, it is important that all parties be heard, that all opinions, for and against, be included and valued. This plan will change over time and with ensuing discussions – and it should! In a dynamic world, the handling of our resources must change, and for the better, or we face a bleak future.

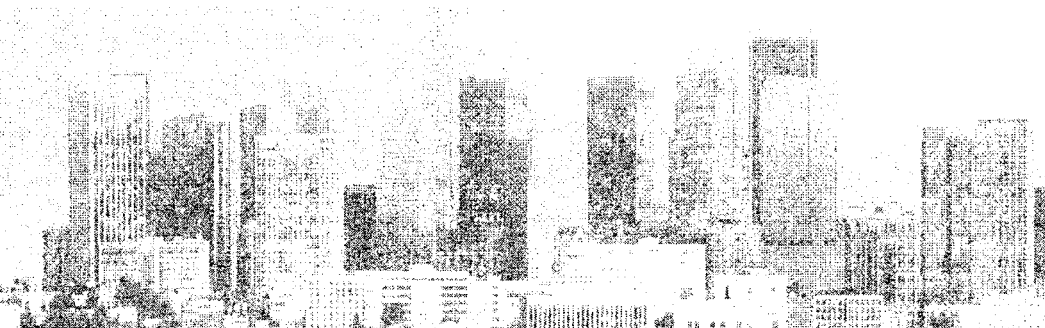
A key ingredient to success will be education. Not only of our school children, and our residents, but also of those in the waste and recycling industries, and the environmental community who have fought so hard and well to get us where we are.

Equally important, we must inform our elected officials, whose leadership and vision will be critical in moving forward.

One key aspect of public education and outreach will be the City's Neighborhood Councils. These strategic Councils will be critical in carrying the vital elements of the plan to their stakeholders. The Neighborhood Councils will also act as focal points and public forums for the successful siting and development of CT facilities and other program components.

With education comes knowledge, with knowledge comes action, and with action comes the fundamental change we need to preserve our living planet for future generations in the City of Los Angeles.

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A Resource Management Blueprint

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Councilman Greig Smith • June 2005

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